

JAMES M. WILLBUR.

JUNE 13, 1910.—Ordered to be printed.

Mr. CANDLER, from the Committee on Claims, submitted the following

ADVERSE REPORT.

[To accompany H. R. 16624.]

The Committee on Claims, to whom was referred the bill (H. R. 16624) authorizing the Secretary of the Treasury to adjust and settle the account of James M. Willbur with the United States, and to pay the heirs or legal representatives of said Willbur, deceased, such sum of money as he may be justly and equitably entitled to, having considered the same, report thereon with a recommendation that it do not pass.

Appended hereto is a copy of a similar bill which passed both Houses of Congress, but was vetoed by President Cleveland October 12, 1888, all of which are made a part of this report.

AN ACT Authorizing the Secretary of the Treasury to state and settle the account of James M. Willbur with the United States, and to pay to said Willbur such sum of money as may be found due him thereon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, directed to pay to James M. Willbur such sum as may be found due him for excess in weight of material and superficial measurement in illuminated tiling, frames, and supports thereof, placed by him in, on, and around the New York post-office and court-house building, in excess of the weight of that which was contracted for at the contract prices for said material, as stipulated with and paid to Bartlett, Robbins and Company in their contract with the United States for illuminated tiling for said building, together with any increased and extra expense or cost incurred by said Willbur resulting from any changes made in the weight and character of said tiling from that which was specified in the contract of said Willbur with Bartlett, Robbins and Company.

SEC. 2. That the Secretary of the Treasury may make said settlement upon the report of such excess of weight and superficial measurement, said report being furnished, by the direction of the Secretary of the Treasury and Senate committee, by the experts, Solomon J. Fague and Archibald Given, date of April twenty-one, eighteen hundred and eighty-six, to the Senate committee and on file with the Senate Committee on Claims; but if not satisfied with the report of such experts, the Secretary of the Treasury shall, within thirty days from the passage of this act, cause a reweighing of said material to be made by two sworn experts, one to be appointed by him and one by claimant, and a third to be appointed by the two first appointed in case they shall not agree; and he shall then pay to said Willbur the difference of excess in weight in superficial measurement as found by said experts between the illuminated tiling and frames and supports thereof furnished by said Willbur and that originally contracted for between said Willbur and Bartlett, Robbins and Company at the contract prices agreed upon for such work and material with and paid to said Bartlett,

Robbins and Company by the United States; and the same shall be taken and accepted by said Willbur in full and final settlement of his claims against the United States on said account.

SEC. 3. That the sum of fifty-two thousand dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated, out of any moneys in the Treasury not otherwise appropriated, to enable the Secretary of the Treasury to carry out and execute the provisions of this act.

The following is the President's veto message returning the above bill to the Senate:

To the Senate:

I herewith return without approval Senate bill number ten hundred and forty-four, entitled "An act authorizing the Secretary of the Treasury to state and settle the account of James M. Willbur with the United States and to pay said Willbur such sum of money as may be found due him thereon."

The claim mentioned in this bill grows out of alleged extra work done by the claimant in the construction of the post-office and court-house building in the city of New York.

The United States, in September, 1874, entered into a contract with Messrs. Bartlett, Robbins & Co., by which they agreed to furnish and put in place certain wrought and cast iron work and glass for the illuminated tiling required for the said building according to certain specifications and schedules which formed a part of said contract. The work was to be of a specified thickness, and the contractors were to be paid for the same at certain rates per superficial foot. The approximate estimate for the entire work was specified at \$35,577.56. Samples of the tiling to be put in were submitted to the Supervising Architect and were accepted by him.

In August, 1874, the claimant entered into an agreement in writing with Bartlett, Robbins & Co., to do this work as subcontractor for them at certain prices for each superficial foot of said tiling put in place.

In neither contract was the weight of the tiling mentioned.

The work was, under the contract with Messrs. Bartlett, Robbins & Co., completed, and after such completion and the measurement of the work the said firm of Bartlett, Robbins & Co. were paid by the Government the sum of \$35,215.57 in full satisfaction of their contract with the United States.

It appears that after the completion of the work the claimant gave notice to the Government that he had a claim against Bartlett, Robbins & Co., growing out of said work, for the sum of \$8,744.44, and requested that payment be withheld from said firm until his claim against them was adjusted.

The fact that said claim had been made having been communicated by the Supervising Architect to Bartlett, Robbins & Co., on the 22d day of August, 1876, they responded to the Supervising Architect as follows:

DEAR SIR: We inclose copy of our account against Willbur and the Illuminated Tiling Company, and a copy of Willbur's assignment to the tile company, which includes a copy of his agreement with us; and when the department settles the measurement of the work the items in the contract will show just what the amount is, and, as we have repeatedly assured him, he will have all the measurements the Government gives us.

If anyone has cause of complaint in this case it is us. Four times the work came to a stand, or nearly so, and our Mr. B. was compelled to go to New York and stay until it was moving again, charging his expenses by Willbur's request, and finally it had to be finished by others, etc. We know this does not interest you particularly, as you do not know him in the matter, but there has been so much willful misrepresentations we thought silence might be misconstrued.

It is charitable to think Willbur must be crazy.

Very respectfully, yours,

BARTLETT, ROBBINS & Co.

In an opinion of the Solicitor of the Treasury concerning this claim, dated November 30, 1883, I find a statement that on the 20th day of October, 1876, a paper was filed by the attorneys of the claimant in which his claim for extra work and material in performing his contract was alleged to be \$21,857.94. It is further stated that this claim was hastily drawn by one of Willbur's attorneys and without consultation with him.

On or about the 20th day of March, 1877, Mr. Willbur himself filed a statement of such extra work and material, in which he claimed for the same the sum of \$42,685.20.

Another statement made by Willbur, in February, 1878, presents a claim, on account of the same matters, amounting to \$47,159.62.

This claim, so variously stated, is based upon the allegation that tiling and frames of greater thickness than were required by the contract were put in the building. Although it was insisted by the claimant that these thicker tiles and frames were

directed to be put in, or at least accepted by the person having charge of the construction of the building for the Government, I hardly think it will be seriously contended that the claimant has any legal claim against the United States.

But, with a view of discovering whether upon equitable grounds the claimant should be paid anything by the Government for glass and iron of greater thickness than its contract with Bartlett, Robbins & Co. required, and which had been put in its building by their subcontractor, the Secretary of the Treasury in 1884 appointed a committee of three persons to examine and report upon this claim of Willbur's, "with a view of determining what portion, if any, it is proper for the Government to pay."

On the 24th day of January, 1885, this committee made a report by which they determined that there should be paid to the claimant on account of the matters alleged the sum of \$1,214.90.

This report was based upon the measurements, examinations, and estimates of two experts, one selected by the claimant and the other by the committee. The report was transmitted to the House of Representatives by the Secretary of the Treasury and an appropriation asked to pay the amount awarded.

But Mr. Willbur was not satisfied, and on the 6th day of January, 1885, addressed a communication to the Secretary of the Treasury, in which this passage occurs:

"I shall insist on a remeasurement of the entire work, as this is vital to my claim. The excess which I furnished can only be ascertained by weight instead of by measuring the thickness of the plates and frames."

At the second session of the Forty-ninth Congress, and early in 1886, this claim was before the Senate Committee on Claims; and at the instance of the committee this work was again examined by experts, who came to the conclusion that the claimant was entitled to the sum of \$45,615.67 for the extra work which he had performed and materials furnished.

It is only alleged that the glass tilings and frames actually put in the building were slightly thicker than those required by the contract, and this alleged increased thickness seems to be fairly represented in a general way by the claim that some of the glass and frames which were required to be 1 inch thick were actually put in $1\frac{1}{4}$ inches thick.

Upon this statement it must be admitted that the sum above stated as the value of this extra thickness is somewhat startling. In the language of the report upon this bill by the Supervising Architect, "A claim of \$47,159.02 for such slight excess on work, the price of which was \$35,217.57, is hardly entitled to consideration.

The claim, as well as the award of the experts last named, reaches their astonishing proportions by the application of weights to the question in the following manner: A certain area is measured. A square foot of the tiling actually put in is weighed, and a square foot of the tiling required by the contract is also weighed. Both these weights are multiplied by the area. The lesser aggregate weight is deducted from the greater, and the difference is divided by the weight of a square foot of the lightest tiling, thus reducing it to square feet of such lightest tile. These square feet are multiplied by the price agreed to be paid by the contract for each superficial foot, and an item of extra work is determined. Thus additional weight is constructed and finished tiling is converted, as far as price and measurement are concerned, into finished tile, which more than doubles the quantity actually laid down.

This can not be right. And yet the bill herewith returned directs the Secretary of the Treasury to settle this claim for extra work upon the basis of the report of the experts who have adopted this mode of adjustment; or, if not satisfied with their report, he shall within thirty days from the passage of the act cause a reweighing of said material to be made by two sworn experts, one to be appointed by him and one by the claimant, and a third to be appointed by these two in case they can not agree. The bill further provides that he shall then pay to said Willbur the difference of excess of weight and superficial measurement as found by said experts between the illuminated tiling and frames furnished and that contracted for at the contract prices for such work and material.

There are features of this claim which suggest suspicion as to its merit. In any view of the matter I regard the claimant as seeking equitable relief. He is not entitled to dictate the rule by which his claim is to be adjusted, and he should be quite satisfied if the officers of the Government charged with the settlement of such matters are permitted by the Congress to afford equitable relief, according to such rules and methods as are best calculated to reach fair results.

GROVER CLEVELAND.

EXECUTIVE MANSION, October 12, 1888.

